

IN THE MATTER OF LICENSE NO. 309560 MERCHANT MARINER'S DOCUMENT NO.
Z-155008 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Frank B. ARCHIBALD

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1593

Frank B. ARCHIBALD

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 139.30-1.

By order dated 30 September 1964, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman's documents for three months upon finding him guilty of inattention to duty. The specification found proved alleges that while serving as master on board the United States SS GREEN LAKE under authority of the license above described, on or about 11 July 1964, Appellant failed to take adequate precautions to guard against approaching St. John Island Light too closely, contributing thereby to the grounding to the charge and specification.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence testimony of the chief mate and second mate of the vessel.

Appellant offered no affirmative defense.

At the end of the hearing, the Examiner reserved decision. He then rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months. Attempted service by registered mail failed.

The entire decision was served on 26 April 1966. Appeal was timely filed on 29 April 1966.

On 11 July 1964, Appellant was serving as master of the United States SS GREEN LAKE and acting under authority of his license and document while the ship was at sea.

The vessel was making an approach to the quarantine anchorage at Singapore, Malaysia. At 2000, the chief mate of the vessel relieved the second mate of the vessel as watch officer.

The chart in use at the time, H.O. 3749, and drawn upon it projected course lines leading first from sea to a point two miles off shore thence somewhat less than forty five degrees to the right to the anchorage.

Appellant came to the bridge at about 2040 and remained there throughout the events discussed here.

At 2115 the second mate relieved the chief mate. The chief mate advised his relief that the vessel was approaching the point of two miles' distance from land. Appellant was then observing the radar.

At 2120 the second mate obtained a fix. In fact, the fix placed the vessel 1.25 miles from shore. The second mate did not at the time measure the distance, but estimated that it was about two miles. (No finding need be made as to whether the second mate advised Appellant of his estimate of the result of his work). He then transferred this fix to a larger scale chart, H.O. 2670. In doing so he drew one line of bearing for the fix from a different light from that on which it was obtained. The resulting error placed the ship, apparently, much further from shore than the true fix did.

Recognizing an error, the second mate then checked the radar and found that the ship was within one mile of shore. He immediately so advised Appellant. The vessel was slowed and hard right rudder was ordered. The vessel grounded at 2126, at a point about 300 yards off the beach.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the grounding was entirely the fault of the second mate because of his errors, and that the Examiner did not sufficiently consider the undermanned condition of the vessel which occurred because of the death of the original master a few days before the casualty.

APPEARANCE: Pierson & Pierson, Baltimore, Md., by Edwards Pierson, Esq.

OPINION

Appellant seeks to avoid responsibility for the grounding by shifting the fault to the second mate. He urges that he had a right to rely upon his mate's work and advice, and that he was misled by the mate's errors.

The second mate made two mistakes. After obtaining a good fix at 2120, he failed to measure the distance to land but estimated it at two miles. Then, in transferring the fix to a larger scale chart (and why this was not used in the first place is not explained), he laid down one of the lines of bearing from an incorrect light. The apparent fix thus shown was seen to be in error because it placed the ship further to seaward than the position originally obtained.

A glance at the radar revealed that the ship was one mile off shore.

There is some confusion in the record as to whether the second mate did or did not advise Appellant, immediately after taking the fix, that the vessel was two miles off shore. The second mate testified twice. The first time, he seemed clearly to say that he never spoke to Appellant until after he ascertained by radar that the distance to shore was less than a mile. The second time, he appeared to say, under prompting by Appellant, that he had advised, at the time of taking the fix, that the two-mile point had been reached.

Appellant's position seems to be that he relied upon the erroneous two mile estimate.

No real effort was made by anyone to pinpoint the facts here and the Examiner, very carefully it seems, refrained from making any positive finding on the question. His silence may be construed as a negative finding, that the second mate said nothing to Appellant at the time of taking the fix.

While it would have been preferable that a specific finding had been made, on my view of the record (somewhat different from the Examiner's) it does not matter which was the truth.

If Appellant was advised, albeit incorrectly, at 2120, that the vessel was two miles from shore, which he says is what he wanted to be advised of, he has not explained why he did not then change course. On the other hand, if he was not advised of anything until the distance was less than one mile, his position must necessarily be that he relied not on any misinformation from the second mate but upon his silence, to assume that the ship had not yet reached the turning point. But even the latter position is insupportable.

II

My view of this record is such that it does not matter what or when the second mate reported to Appellant.

It is clear that at 2120 the ship was 1.25 miles from the shore. Five minutes before, at 2115, when the second mate relieved the chief mate, Appellant was observing the radar.

While I am not privileged on this record to know the course or position of the vessel at any time, certain valid inferences may be drawn from the evidence available.

The projected course change for the time when the ship should be two miles off shore was of somewhat less than forty five degrees. There are two extreme possibilities. One is that the ship was originally on course perpendicular to the shore and the intention was to change course at most forty five degrees to the right and thus approach still closer to the beach in reaching the desired anchorage. The other is that the projected forty five degrees course change would bring the ship to a course parallel to the shore.

If the perpendicular approach were the fact, the vessel was, at 2115, one third of a mile from the intended course-change point. At thirteen knots, traversing this distance would take only a minute and a half. Appellant is chargeable with knowing this, regardless of the faults of the second mate, because he was looking at the radar at 2115. If, after 2115, Appellant did in fact tell the second mate to advise him when the ship reached the two mile point, he does not present a defense because he cannot explain why he waited more than five minutes for his first report.

To take the other extreme, that of the vessel changing course forty five degrees to the right in order to run parallel to the shore, it is recalled that at 2120, the distance to shore was 1.25 miles. Therefore, at 2115, the vessel would have been almost precisely two mile off shore and Appellant is chargeable with knowing that fact because he was then looking at the radar.

Whatever the facts were, between the two extremes possible, it is clear that Appellant had no right to rely upon anyone else, because the necessary facts were within his own knowledge to ascertain that the two mile point had been reached well before grounding.

III

There is nothing in the record, nor is there room for speculation, in support of Appellant's contention that the Examiner should have given more weight to the fact that the vessel was short handed for licensed deck officers because of the death of the original master. This had nothing to do with the grounding.

IV

The charge in this case is "inattention to duty." This is akin to "negligence."

Suspension of a merchant mariner's document is not appropriate when the inattention alleged and found is peculiar to the function of a licensed officer.

CONCLUSION

Within the limits of the material offered for consideration on appeal, it is obvious that Appellant was inattentive to his duty to preserve his ship from grounding.

The order of the Examiner will be modified to apply only to Appellant's license.

ORDER

The findings of the Examiner entered at New Orleans, Louisiana, on 30 September 1964, are **AFFIRMED**. His order is **MODIFIED** to provide for a suspension of Appellant's license only, for a period of three months.

W.J. SMITH
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 8th day of December 1966.

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